REPORT - PLANNING COMMISSION MEETING December 11, 2003

Project Name and Number: Bayside Business Park II (PLN 2004-00071)

Applicant: King and Lyons

Proposal: An annual review of the Development Agreement to determine compliance

Recommended Action: Find the applicant to be in compliance with the provisions of Development Agreement DA-

92-1

Location: The proposed project is generally located on the west side of Interstate 880, north of Dixon

Landing Road, south of the current Fremont Boulevard terminus.

Assessor Parcel Number(s): 519-0820-002-14, 519-0820-002-18

Area: 159 Acres

Owner: Irving Lyons

Agent of Applicant: John Hanson, King and Lyons

Consultant(s): None

Environmental Review: Environmental Impact Report EIA-89-56 (SCH#89030071) for vesting tentative tract map

and grading plan was approved by the City Council on March 1, 1994. This annual review of Development Agreement compliance is not a project as defined in the CEQA Guidelines.

Section 15368, no further action is required.

Existing General Plan: Restricted Industrial

Existing Zoning: I-R, Restricted Industrial

Existing Land Use: Vacant (grading in progress)

Public Hearing Notice: Public hearing notification is applicable. A total of nineteen notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Fremont Boulevard, Lakeview Boulevard, and Kato Road. The notices to owners and occupants were mailed on November 26, 2003. A Public Hearing Notice was delivered to The Argus on November 21, 2003, to be published by November 27, 2003

Executive Summary: The Development Agreement approved by the City in 1994, requires an annual report from the City Manager on whether or not King and Lyons is in compliance with the requirements or obligations of the agreement for that time period. No actions were required of the developer during the period between August 8, 2002 and December 11, 2003. It is recommended that the Planning Commission find King and Lyons to be in compliance with the provisions of Development Agreement DA 92-1.

Background: An Environmental Impact Report (EIR-89-56), rezoning (Z-89-8), a vesting tentative tract map (Tract 6591), a preliminary grading plan (GP-92-11), and a development agreement (DA-92-1) were approved by the City Council on March 1, 1994 for the 159-acre project site. The approved project designated 90 acres adjacent to Coyote Creek and the existing Wildlife Refuge as wetlands, and included a mitigation plan that would restore the lower wetlands area while providing some raised areas for protection of the salt marsh harvest mouse habitat. The remaining 59 acres of upland area was approved for nine developable lots (adjacent to Interstate 880), a right-of-way and the extension of Fremont Boulevard to Dixon Landing Road.

On August 10, 2000, the Planning Commission approved a revised Preliminary Grading Plan for the project. On October 24, 2000, the City Council denied a third party appeal of the Planning Commission's approval of the preliminary grading plan. During the time period between the original approval and the 2001 review, the applicant focused on negotiations with the natural resource agencies and the Army Corps of Engineer to develop a wetland design that would be acceptable to those agencies. By mid July 2001, King and Lyons received approvals from the natural resources agencies for the wetland design.

On August 9, 2001, and August 8, 2002 the Planning Commission found King and Lyons to be in compliance with the provisions of Development Agreement DA-92-1.

Development Agreement:

The Development Agreement cites as rationale for entering into the agreement:

- Need for construction of a levee along the westerly perimeter of the development portion of the property and Interstate 880, just easterly of the project site [to protect an endangered species on site (salt marsh harvest mouse)];
- City interest in mitigating the impacts on wetlands in advance of development;
- Potential for public cost savings in construction of Interstate 880/Dixon Landing Road interchange if development of the site commences before construction of the interchange;
- Early construction of the project will provide a second access to I-880 for the southern industrial area, westerly of Interstate 880;
- Providing an alternative parallel route for I-880 to State Route 237 when McCarthy Boulevard is extended south by the City of Milpitas;
- Potential for purchase of Lot 1 at the northeasterly corner of the project site for use as an off-site mitigation area for wetland impacts at Dixon Landing interchange;
- Economic benefits of increased employment near the freeway interchange.

Obligations to provide the above benefits were primarily implemented in the conditions of the Vesting Tentative Tract Map and other approvals, not the agreement. The only developer obligation set forth in the Development Agreement was to agree that the development of the property will be in conformance with the Existing Approvals (i.e., the General Plan, Zoning, EIR, Vesting Tentative Tract Map and Preliminary Grading Plan). The City's obligation was to agree to accept, process and review in good faith and in a timely manner all applications related to future approval and to cooperate with the developer in its efforts to obtain permits from other natural resources and public agencies (Article 3 of the Development Agreement). The applicant has submitted a letter briefly describing the major benefits related to the development agreement and stats that they are in compliance with the provisions of the Development Agreement. The applicant's wetland biologist report on the construction of the wetlands to date is included in the Planning Commission packets for information purposes only.

Analysis: The following section briefly reviews the relevant obligations contained in the project approvals.

Construction of Levee: To protect the development and Interstate 880, Vesting Tentative Tract 6591 included a berm with a top elevation of 12 feet above mean sea level, along the westerly side of Fremont Boulevard (along side a 50 foot wide moat intended to protect endangered species from predators). Condition 18 of the vesting map required the developer to post bonds for the construction of the berm and to complete the berm prior to the issuance of occupancy for any buildings within the project. The revised preliminary grading plan approved by the Planning Commission and upheld by the City Council in August and October of 2000 eliminated the berm (and the moat).

To protect the project and Fremont Boulevard from a 100-year flood, the revised grading plan will raise the elevation of building pads and the extension of Fremont Boulevard to between 10-12 feet. According to the grading plan staff report to the Commission, the development's storm drain system will direct storm runoff from the development area into the marsh area and then to Coyote Creek through the proposed pond at the westerly perimeter of the site. Storm water runoff from the proposed development and the proposed Fremont Boulevard extension will be conveyed by means of an underground piped-in storm drainage system with drainage outfalls into the marsh areas. A 9-foot high levee is proposed which will separate the pond from the marsh area. The low flow will be handled by a ditch located in the upstream side of the levee

and a pump located at the northwesterly corner of the wetland area, and will be discharged to Coyote Creek. The high flow from the marsh area will be channeled to the pond (with bottom elevation of – 5 feet) by means of a series of 24-inch storm drain lines provided with flap gates. Finally, the storm runoff will be channeled from the pond to Coyote Creek via a series of 36-inch storm drain lines provided with flap gates and drainage outfalls into Coyote Creek. The flap gates will prevent the incursion of salt water into the pond during high tide. The applicant will submit the master storm drainage plan with hydraulic calculations and hydrology for Lots 1 through 9 at the development stage of the project (Phase 2) including the improvement plans for Fremont Boulevard. The storm drainage plans and hydraulic calculations will be subject to the review and approval by the Alameda County Flood Control District and the City Engineer.

Staff Comment: At the time of Development Agreement approval, a levee or berm was proposed along the westerly border of the project. During the refinement of the wetland mitigation plan, an alternative solution for protecting the wetlands, development and freeway was developed. While the developer is obligated to incorporate the current solution into the project, the Development Agreement contains no specific obligation to construct a flood facility. The attached 'Compliance Evaluation' sheds light on the levee improvement process and addresses the completion of the culvert and flap gates. The Developer is in compliance with the Development Agreement.

Wetlands Construction: Much of the time between the City approval of the project and the start of construction was spent working with public agencies, most notably, U.S. Fish and Wildlife Service, on the details of the wetlands to be created. According to the August 11, 2000 staff report on the preliminary grading plan, there will be about 85 acres of wetland restoration and enhancement. The work includes a new tidal pond and marsh in the western end of the site and improvements to the existing wetlands to improve winter drainage through the tidal ponds and constructed channels and tidal irrigation during the summer and fall. The intent of the design is to promote salt marsh growth. The project construction, including the wetland restoration, is divided into three phases. Phase 1, now virtually complete, consists of wetland restoration and enhancement work and the excavation and fill needed to rough grade the first five lots. Phase 2 includes the rough grading for the remaining four lots, a box culvert across Scott Creek, and certain wetland and drainage improvements. Work on Phase 2 will not occur until specific performance standards are met in the restored and enhanced marshes of Phase 1. Phase 3 involves construction of the final wetland design and construction of Fremont Boulevard and that portion of Dixon Landing Road not constructed in connection with the Dixon Landing interchange. See the enclosed staff report to the Planning Commission dated August 10, 2000 for more details.

Staff Comment: While no specific obligation for wetland restoration is contained in the Development Agreement, the developer's representative reports that the Phase 1 wetland construction is substantially complete. The developer has also provided the U.S. Army Corps of Engineers ("COE") and the City a baseline report which describes the project site's pre-construction condition and refined performance standards as required by the COE fill permit. Staff conducted a field trip, reviewed the required documentation and discussed the progress with the biological consultant. The Developer is in compliance with the Development Agreement.

Fremont Boulevard Construction: Vesting Tentative Tract Map 6591 requires the dedication of right of way and all improvements of Fremont Boulevard from its existing terminus to Dixon Landing Road and McCarthy Boulevard in Milpitas. The revised Preliminary Grading Plan approved by the Commission required the developer to submit improvement plans for Fremont Boulevard prior to commencement of grading for phase 2. Construction of Fremont Boulevard extension is planned to be done in Phase 3. Phase 3 is expected to begin within two to three years.

Staff Comment: Work is progressing on the improvement plans and rough grading of Fremont Boulevard. The developer is in compliance with the Development Agreement.

Lot 1's Use as Wetland Replacement: As part of the Development Agreement, the applicant agreed to make available for purchase, Lot 1 for possible use as a wetland, replacing wetlands impacted by the construction of the Dixon Landing Road interchange. Condition 10 of the Vesting Tentative Tract Map 6591 prohibits construction on Lot 1 until December 31, 1998 to allow purchase for wetland construction. Other land was purchased for mitigation of the interchange wetland destruction and the obligation to withhold construction on the parcel has expired.

Staff Comment: The developer has fulfilled the obligation to make available Lot 1 for use as a wetland mitigation area. The developer is in compliance with the Development Agreement.

Parallel Route: Construction of the Interstate 880-Dixon Landing interchange has begun. Completion of that project is expected to be spring 2004. McCarthy Boulevard has been extended from Dixon Landing Road to Route 237 in San Jose. With the construction of Fremont Boulevard across the subject property, a parallel route along Interstate 880 will be completed. Completion of Fremont Boulevard could be complete within four to five years, if the development phasing proceeds as planned.

Staff Comment: Project approvals require the developer to construct Fremont Boulevard to Dixon Landing Road and McCarthy Boulevard. No obligations for Fremont Boulevard extension were required during the review period. The developer is in compliance with the provisions of the Development Agreement.

Environmental Analysis: EIR-89-56, consisting of a Draft and Final Environmental Impact Report was approved for the proposed project as originally submitted. The project has since been modified to further mitigate impacts to wetland resources to the satisfaction of the jurisdictional permitting agencies, including U.S. Fish & Wildlife Service and U.S. Army Corps of Engineers. The revised project proposal contains less overall grading volumes, minor changes to the mitigation design and implementation, phasing, elimination of a proposed mitigation levee and predator diversion moat (resulting in increased pad elevations for lots 1 – 9 and the Fremont Boulevard extension to keep those facilities out of the 100-year flood zone). An addendum to the EIR was incorporated into the report on the preliminary grading plan approved by the Planning Commission on August 11, 2000.

The action required of the Planning Commission is a review of a development agreement for compliance, and such compliance review is not a project which may have environmental impact as defined by CEQA Guidelines, Section 15163. Therefore, no additional environmental documents are required.

Mitigation Monitoring/Reporting Plan: The vesting tentative map for the project required the approval of a mitigation monitoring /reporting plan prior to the first final map. The Assistant City Manager approved a mitigation monitoring/reporting plan on June 26, 2002. Prior to the approval of the plan, the City has reviewed wetland restoration activities on the property for compliance with the mitigation measures incorporated into the vesting tentative tract map and grading plan. The project has been in compliance with those mitigation measures.

Conclusion: Staff believes King and Lyons is in compliance with the provisions of the Development Agreement for the 2002- 2003 review period. Under the provisions of the Fremont Municipal Code, if the Planning Commission finds the developer to be in compliance, the review is completed. If the Planning Commission, finds and determines on the basis of substantial evidence the developer has not complied in good faith with the terms and conditions of the agreement during the period of review, the Planning Commission must forward its recommendation to the City Council. The City Council may modify or terminate the agreement.

Response from Agencies and Organizations: None

Enclosures: Compliance Evaluation and Chronology for Wetlands construction from John Hanson dated October 1,

2003.

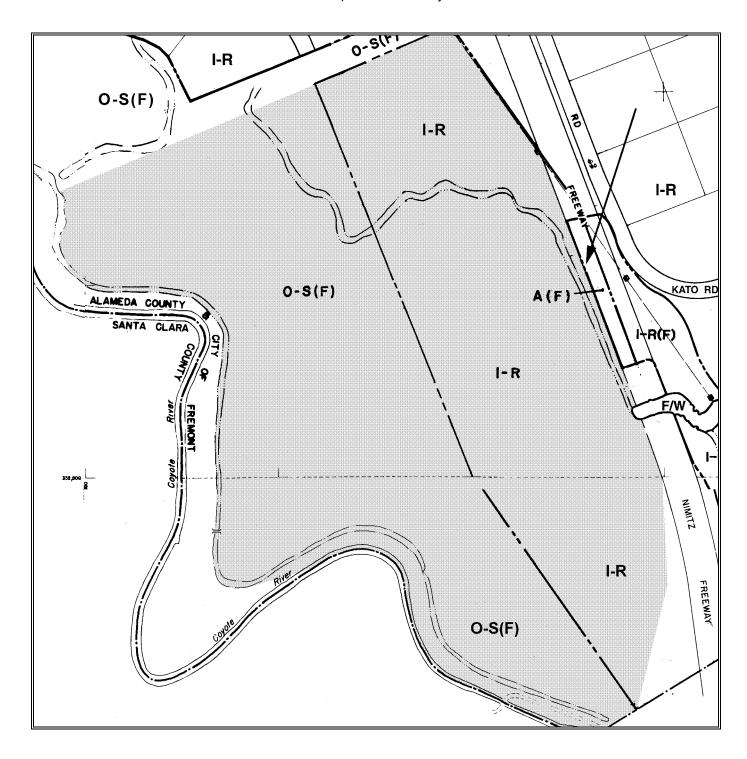
Informational: August 10, 2000 Planning Commission Staff Report

General Plan and Zoning Exhibit

Recommended Actions:

- 1. Hold public hearing.
- 2. Find the annual review of the Development Agreement is not a project as defined in CEQA Guidelines Section 15168 and that no further environmental document is needed for this review.
- 3. Find on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the development agreement for the period under review.

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan

